

Message Text

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ACTION IO-13

INFO OCT-01 AF-08 ISO-00 DHA-02 ORM-02 OES-06 HEW-04 AID-05

ARA-06 EA-07 EUR-12 NEA-10 OIC-02 CU-02 OMB-01

CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00 NSC-05

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E.O. 11652: N/A

TAGS: SHUM

SUBJ: 29TH SESSION SUB-COMMISSION ON PREVENTION OF DISCRIMINATION
AND PROTECTION OF MINORITIES 12 AUG - 1 SEPT.

AGENDA ITEM 7 - RIGHT TO SELF DETERMINATION - AUG. 25-26.

1. SPECIAL RAPPORTEUR AURELIU CRISTESCU (ROMANIA) GAVE 1 1/2 HOUR
PROGRESS REPORT ON HIS STUDY (DOCUMENT E/CN.4/SUB 2/L.641). A
PROMINENT THESIS DURING PRESENTATION WAS RAPPORTEUR'S INTERPRETA-
TION THAT THE TERM PEOPLE (AS USED IN UN DOCUMENTS) REALLY MEANS
THE STATE. AUTHOR ALSO REVIEWED RECENT AND HISTORICAL DEVELOP-
MENTS IN INTERNATIONAL LAW AFFECTING THE RIGHT OF SELF-DETERMINATION,
CITING RELEVANT DECLARATIONS E.G. PRINCIPLES OF INTERNATIONAL LAW
CONCERNING FRIENDLY RELATIONS AND COOPERATION AMONG STATES AND
THE ATLANTIC CHARTER OF 1941 AS AMONG LANDMARKS WHICH HAVE
STRENGTHENED THE FUNDAMENTAL RIGHT OF SELF-DETERMINATION.

2. GANJI AND KHALIFA NOTED THE IMPORTANCE OF SOCIAL DEVELOP-
MENT IN RELATION TO SELF-DETERMINATION IN CRISTESCU'S STUDY.
BOTH MEMBERS SUGGESTED THAT THE EXPERT MIGHT WANT TO SUB-
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STANTIATE THIS ASPECT OF THE DOCUMENT WITH RELEVANT REFERENCES

TO INTERNATIONAL LEGAL INSTRUMENTS. THEY ALSO STRESSED PRESENTING SOCIAL, ECONOMIC, POLITICAL AND CULTURAL DEVELOPMENT AS THE UNIFIED APPROACH.

3. CAREY (US ALTERNATE) OBSERVATIONS, WHICH WERE TECHNICAL, PREFACED HIS REMARKS BY SAYING HE COULD APPRECIATE REPORT BECAUSE OF YEARS HE HAD SPENT STUDYING AND TEACHING INTERNATIONAL LAW. CAREY NOTED THAT PARA 1 OF THE STATEMENT WAS NOT PERSUASIVE: THE IMPORTANCE AND INFLUENCE OF A CONCEPT DO NOT BY THEMSELVES EMBODY IT IN INTERNATIONAL LAW. REGARDING THE EXTENSIVE RESES CITED IN THE DOCUMENT THE SPEAKER SUGGESTED THAT THEY COULD NOT BE TAKEN AS INDICATIONS OF WIDE ACCEPTANCE WITHOUT SHOWING THE VOTE IN EACH CASE. NOTING PARA 43 CAREY SAID THAT A RES CIRCA 1970 COULD NOT AND HAD NOT "PUT AN END TO THE VARIOUS THEORETICAL DISPUTES CONCERNING THE LEGAL NATURE OF THE PRINCIPLE OF SELF-DETERMINATION. THIS, THE EXPERT SAID, IS BECAUSE THE GA CAN ONLY RECOMMEND, NOT LEGISLATE. REFERRING TO PARA 57 SPEAKER EMPHASIZED THAT THE REPORT CONCEDES THAT EVEN A DECLARATION CREATES NO INTERNATIONAL LAW BY ITSELF BUT ONLY IF FOLLOWED AS A MATTER OF "STATE PRACTICE." THE SAME IS TRUE REGARDING A LEGAL AND POLITICAL FORMULATION BY THE INTERNATIONAL COMMUNITY. WHETHER LEGAL OR POLITICAL OR BOTH IT DOES NOT CREATE INTERNATIONAL LAW. THE NOTION THAT SELF-DETERMINATION IS JUS COGENS, A PREMPTORY NORM OF GENERAL INTERNATIONAL LAW, WAS APPROACHED WITH CAUTION BY CRISTESCU WITH NO DEFINITIVE CONCLUSIONS, IN CONTRAST TO GROS-ESPIELL'S ADVOCACY. CAREY SAID THE SC COULD ONLY AWAIT FURTHER DEVELOPMENT OF THIS CONCEPT BY THE TWO SPECIAL RAPPORTEURS BEFORE ANY CREATIVE DISCUSSION COULD TAKE PLACE. SPEAKER ASKED THAT FINAL DRAFT OF DOCUMENT CLARIFY THE PHRASE "REINTEGRATE NATURAL WEALTH AND RESOURCES" (PAGE 19). UNDER THE SAME AREA OF DISCUSSION US ALTERNATE POINTED OUT THAT IT IS AN EXERCISE OF SOVEREIGNTY, NOT A DENIAL OF IT, FOR A STATE TO BIND ITSELF BY A TREATY OR CONTRACT. THEREFORE, A STATE CANNOT GET OUT OF A TREATY OR CONTRACT MERELY BECAUSE IT IS A SOVEREIGN. THE SPEAKER QUESTIONED WHETHER SELF-DETERMINATION IS IN FACT "THE BASIS FOR THE EXERCISE OF CIVIL AND POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS (PARA 134). SIMILARLY, CAREY ASKED WHETHER SELF-DETERMINATION IS THE MOST IMPORTANT SUBJECTIVE RIGHT AMONG LIMITED OFFICIAL USE

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HUMAN RIGHTS," CONTRASTING IT TO THE RIGHT TO LIFE ITSELF AND WHETHER "THIS RIGHT IS A PREREQUISITE FOR THE EXERCISE OF ALL INDIVIDUAL RIGHTS AND FREEDOMS" (PARA 137).

4. WHILE PRAISING CRISTESCU FOR INCLUDING "FREEDOM OF SPEECH" AND THE "RIGHT OF EVERYONE TO JOIN POLITICAL PARTIES" (EXPLICITLY STRESSING THE PLURAL NATURE OF "PARTIES" (PARA 167), CAREY CAUTIONED THE AUTHOR THAT IT WAS IMPORTANT NOT TO HOLD OUT

FALSE HOPES THAT A CHANGE IN THE ECONOMIC SYSTEM (PARA 262)
WOULD NECESSARILY AVOID EXPLOITATION OF MAN BY MAN (PARA 262)
SINCE ALL ECONOMIC SYSTEMS CAN BE AND ARE INVOLVED IN SUCH
EXPLOITATION.

5. CASSESE (ITALY) ATTACKED CRISTESCU'S STATEMENT THAT PEOPLE
REALLY MEANS THE STATE AND CONTENDED THAT THE STUDY PLACED
TOO MUCH EMPHASIS ON STATES RATHER THAN PEOPLE AS BENEFICIARIES
OF SELF-DETERMINATION.

6. DADIANI (USSR ALTERNATE) SUPPORTED CRISTESCU'S STUDY AND
WENT ON TO CITE CUBA'S INTERVENTION IN ANGOLA AS AN EXAMPLE
OF SELF-DETERMINATION SINCE NETTO REPRESENTED WILL OF THE PEOPLE.

7. BECAUSE OF THE CLOSE RELATIONSHIP BETWEEN CRISTESCU'S
STUDY AND ONE BEING CONDUCTED BY HECTOR GROS ESPIELL (DOC.
E/CN.4/SUB2/377), THE SC HEARD A BRIEF STATEMENT BY THE
LATTER SPECIAL RAPPORTEUR.

8. DURING HIS REPLY CRISTESCU NOTED THAT BECAUSE HE AND
GROS ESPIELL COME FROM DIFFERENT REGIONS OF THE WORLD AND
WERE EXPONENTS OF DIFFERENT POINTS OF VIEW THERE WAS NO
PARALLELISM BETWEEN THEIR REPORTS.

9. AS REQUESTED BY CAREY, CRISTESCU SAID HE WOULD INCLUDE
THE DECLARATION OF INDEPENDENCE AS AN IMPORTANT DOCUMENT ON
SELF-DETERMINATION.

10. FINAL REPORT ON THIS ITEM WILL BE PRESENTED AT 30TH
SESSION OF SUB-COMMISSION.CATTO

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